

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR 2013–0076, Sequence 4]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–68; Introduction

AGENCY: Department of Defense (DoD), General Services Administration (GSA),

and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of an interim rule.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rule agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) in this Federal Acquisition Circular (FAC) 2005–68. A companion document, the *Small Entity Compliance Guide* (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at <http://www.regulations.gov>.

DATES: For effective dates and comment dates see separate documents, which follow.

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears in the table below in relation to the FAR case. Please cite FAC 2005–68 and the specific FAR case number. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755.

RULE LISTED IN FAC 2005–68

Subject	FAR Case	Analyst
Expansion of Applicability of the Senior Executive Compensation Benchmark (Interim)	2012–017	Chambers.

SUPPLEMENTARY INFORMATION: Summary for the FAR rule follow. For the actual revisions and/or amendments made by this FAR case, refer to the specific item number and subject set forth in the document following this item summary. FAC 2005–68 amends the FAR as specified below:

Expansion of Applicability of the Senior Executive Compensation Benchmark (FAR Case 2012–017) (Interim)

This interim rule amends the FAR to implement the statutorily-expanded reach of the limitation on the allowability of compensation costs for certain contractor personnel. This limitation on the allowability of compensation costs is an amount set annually by the Office of Federal Procurement Policy. Prior to the enactment of section 803 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112–81), this limitation applied to a contractor’s five most highly compensated employees in management positions at each home office and each segment of the contractor, with respect to all contracts subject to the FAR cost principles with all Federal agencies. In section 803, Congress expanded the application of the limitation so that it applies to all contractor employees, rather than just the top five executives in the case of contracts covered by Title 10 of the United States Code. Moreover, Congress in section 803(c)(2) stated that this expanded reach “shall apply with respect to costs of compensation incurred after January 1, 2012, under contracts entered into before, on, or after

the date of the enactment of this Act” (the date of enactment was December 31, 2011). Section 803(c)(1) also provided that this change shall be implemented in the FAR.

This interim rule implements section 803 and provides that for DoD, NASA, and Coast Guard contracts, the compensation limitation applies to all contractor employees, rather than just the top five executives. For contracts with agencies other than DoD, NASA, and the Coast Guard, the reach of the limitation was not changed by section 803 and therefore will continue to be a contractor’s five most highly compensated employees in management positions at each home office and each segment of the contractor.

An analysis of data in the Federal Procurement Data System (FPDS) revealed that most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the cost principle contained in this rule.

Section 803 is being implemented in the FAR through two rulemakings. In accordance with section 803, this interim rule applies to the compensation costs of all contractor employees incurred after January 1, 2012, on all DoD, NASA, and Coast Guard contracts awarded on or after December 31, 2011. Concurrently, DoD, GSA, and NASA are issuing a proposed rule (FAR Case 2012–025) to solicit comments on the application of the requirements of section 803 to DoD, NASA, and Coast Guard contracts entered into before December 31, 2011.

Dated: June 10, 2013.

Laura Auletta,

Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

Federal Acquisition Circular (FAC) 2005–68 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005–68 is effective June 26, 2013.

Dated: June 17, 2013.

Richard Ginman,

Director, Defense Procurement and Acquisition Policy.

Dated: June 10, 2013.

Laura Auletta,

Acting Senior Procurement Executive, Office of Acquisition Policy, U.S. General Services Administration.

Dated: June 13, 2013.

Ronald A. Poussard,

Director, Contract Management Division, Office of Procurement, National Aeronautics and Space Administration.

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